

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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ROBERT H. J. THOLIO
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W.D. OF TN. MEMPHIS

JERRY L. BILLINGSLEY,

Plaintiff,

v.

No. 02-2920 B

SHELBY COUNTY DEPARTMENT
OF CORRECTION, et al.,

Defendants.

ORDER OVERRULING OBJECTIONS OF THE PLAINTIFF AND
AFFIRMING THE ORDER OF THE MAGISTRATE JUDGE ON
MENTAL EVALUATION OF THE PLAINTIFF

On February 25, 2005, the Defendants, Shelby County, Jon Kirkland and J. Ford, moved jointly for a mental evaluation of the pro se Plaintiff, Jerry L. Billingsley. After the Plaintiff failed to respond, the Court directed that the evaluation be conducted in an order entered March 1, 2005. On March 11, 2005, the Plaintiff filed a motion in opposition to the mental evaluation, which was referred to the magistrate judge for determination. Billingsley did not object to the evaluation itself, but, as set forth in his motion, contended that the Defendants refused to conduct it pursuant to an agreement by the parties. In particular, Billingsley took issue with the selection of the examiner. The Defendants, on the other hand, denied the existence of an agreement. Following the entry of an order denying the motion on April 22, 2005, an objection was filed by the Plaintiff, in which he argued that the Defendants' selection of the examiner, Dr. William Wolters, a forensic psychiatrist, would be prejudicial to his case.


Rule 35 of the Federal Rules of Civil Procedure, which governs physical and mental

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evaluations of persons involved in civil matters, requires that such examinations be performed by "a suitably licensed or certified examiner." Fed. R. Civ. P. 35(a). The Rule does not mandate the manner in which the examiner may be chosen. In this case, the magistrate judge concluded that Billingsley had come forth with no evidence to suggest an examination by Dr. Wolters would be prejudicial. In his objections to the order, the Plaintiff restates his position, but offers, as was the case before the magistrate judge, nothing more than conjecture in support thereof.

Accordingly, upon a review of the relevant pleadings, the Court finds that the magistrate judge's decision was neither clearly erroneous nor contrary to law. See Fed. R. Civ. P. 72(a). Thus, the Plaintiff's objections are OVERRULED and the magistrate judge's order is AFFIRMED.

IT IS SO ORDERED this 9th day of May, 2005.



J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 164 in case 2:02-CV-02920 was distributed by fax, mail, or direct printing on May 13, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT